

United States Senate

WASHINGTON, DC 20510

December 20, 2022

The Honorable Lloyd J. Austin III
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Austin:

We write to you with deep concern over reports that military families are being forced to sign non-disclosure agreements (NDAs) with privatized military housing companies in order to receive compensation for poor housing conditions or damages.¹ These nefarious practices are not consistent with the law, prevent housing providers from being held fully accountable for their failures, and put military families at risk – and the Department of Defense (“DoD” or “the Department”) must put an end to their use.

Congress has been clear about the dangers of requiring military families to sign NDAs for on-base housing. In Senate Armed Services Committee hearings in 2019, Senator Thom Tillis questioned the private housing companies’ use of these NDAs, noting that signing them forces tenants “to sign away your right to say you’re living in inadequate conditions.”² Despite calling for NDAs to be rescinded and for the practice to end in March 2019, his office received reports that it continued in 2019.³ In response to these concerns, the Fiscal Year (FY) 2020 *National Defense Authorization Act* (NDAA) included a provision requiring companies to notify and receive approval from the Assistant Secretary of Defense for Sustainment—the responsibility for which now falls under the Assistant Secretary of Defense for Energy, Installations & Environment (EI&E)⁴—when a landlord uses a non-disclosure agreement.⁵ The law also makes clear that current or prospective tenants cannot be required to sign NDAs “in connection with

¹ Information on file with the Office of Senator Elizabeth Warren; Fox13, “‘It’s hush money.’ Military family rejects housing settlement over mold, sewage requiring NDA,” Samantha Manning, November 30, 2022, <https://www.fox13memphis.com/news/local/its-hush-money-military-family-rejects-housing-settlement-over-mold-sewage-requiring-nda/7US57VAEH5EY3P5SMNGS6FVJXM/?fbclid=IwAR2KlrT5Emhj34tDOGEgyptMjrnWgIY217N6mtb2hTCbjMIRH3FKUWD1Q3Fo>.

² Senate Armed Services Committee, Transcript from “Chain of Command’s Accountability to Provide Safe Military Housing and Other Building Infrastructure to Servicemembers and Their Families,” March 7, 2019, p. 113, <https://www.armed-services.senate.gov/hearings/19-03-07-chain-of-commands-accountability-to-provide-safe-military-housing-and-other-building-infrastructure-to-servicemembers-and-their-families>.

³ Senate Armed Services Committee, Transcript from “Government Accountability Office on Privatized Housing Findings to Include Responses from the Military Services on Ongoing Reports of Substandard Housing Conditions and Services,” December 3, 2019, pp. 83-84, https://www.armed-services.senate.gov/imo/media/doc/19-77_12-03-19.pdf.

⁴ Written Testimony of Paul Cramer to the U.S. House Armed Services Subcommittee on Readiness, March 16, 2022, pp. 1 and 10-12, <https://docs.house.gov/meetings/AS/AS03/20220316/114526/HHRG-117-AS03-Wstate-CramerP-20220316.pdf#>.

⁵ National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, Sec. 2891a.

entering into, continuing, or terminating a lease for the housing unit,” and that, “Any such agreement against the interests of the tenant is invalid.”⁶

Despite these reforms, it appears the use of NDAs has not stopped. We have received reports from a safe military housing advocate that military families are still being forced to sign NDAs in order to receive compensation for damaged property, and obtained copies of the NDAs that Balfour Beatty Communities and Liberty Military Housing forced on military families.⁷ The use of NDAs leaves tenants who were provided with unsafe or unhealthy housing conditions forced to choose between receiving compensation for those atrocious conditions and forever remaining silent about their experiences or telling their story and having to pay out of their own pockets for safe housing conditions. Furthermore, it allows the private housing companies to evade responsibility for their failures. These are unacceptable outcomes.

One NDA brought to our attention was required by Balfour Beatty Communities, LLC (BBC), a company that has consistently engaged in the mistreatment of military families.⁸ BBC attempted to force a family to sign this NDA in order to receive compensation for damaged property from mold. The family refused to do so because they did not want to be silenced and prevented from making any future claims. The NDA states that, “Residents hereby agree to release and forever discharge each of the Landlord and the Manager and their respective successors, assigns, heirs and any affiliates, directors, officers, employees and representatives (the “Released Parties”), of and from any and all past, present or future causes of action, damages, losses, liabilities, claims and demands, involving, in connection with, arising out of or relating to the Claim.”⁹

Another public report from November 2022 indicated that the housing company Michaels Organization has also been requiring families to sign NDAs in order to receive a settlement for unsafe housing conditions at Fort Belvoir.¹⁰ The family refused to sign the NDA, which would have required them not to discuss the claims or make negative statements about their housing in public. As the spouse of the servicemember described, “It’s hush money. It’s we put you in a moldy and unsafe house. If you want us to remediate your things, take pennies and shut up.”¹¹ According to the same report, the Michaels Organization is also being sued by other residents regarding similar housing issues.¹²

These NDAs clearly undermine the rights of military families – and the BBC agreement, by prohibiting tenants from reporting any future issues that may arise due to unhealthy or unsafe housing, also impinges on the ability of DoD and the Department of Justice (DOJ) to monitor BBC’s compliance through an independent compliance monitor as part of its DOJ settlement agreements.¹³

⁶ *Id.* Sec. 3024.

⁷ Information on file with the Office of Senator Elizabeth Warren.

⁸ *Id.*

⁹ *Id.*

¹⁰ Fox13, “‘It’s hush money.’ Military family rejects housing settlement over mold, sewage requiring NDA,” Samantha Manning, November 30, 2022, <https://www.fox13memphis.com/news/local/its-hush-money-military-family-rejects-housing-settlement-over-mold-sewage-requiring-nda/7US57VAEH5EY3P5SMNGS6FVJXM/?fbclid=IwAR2KlrT5Emhj34tDOGEGytMjrnWgIY217N6mtb2hTCbjMIRH3FKUWD1Q3Fo>.

¹¹ *Id.*

¹² *Id.*

The BBC NDA prohibits tenants from sharing their experience publicly, or even from criticizing the company. Residents are forced to agree that they “shall not engage in or facilitate any statements, postings, critiques, reviews, or any other communication in relation to the Claim that in any way mentions the Released Parties...Residents further agree and understand that none of them shall, directly or indirectly, interfere with, or disparage, in any way in relation to the Claim, the Released Parties, including but not limited to Balfour Beatty Communities, LLC, or any of its agents, officers, directors, managers, employees, past or present.”¹⁴

Tenants who sign the BBC NDA are therefore also forced to forfeit their right “to report inadequate housing standards or deficits in habitability of the housing unit,” which appears to be a direct violation of the Military Housing Privatization Initiative (MHPI) tenant bill of rights.¹⁵ If tenants are prohibited from sharing their experience publicly, it further harms the government’s ability to track these complaints and behavior, and hurts other military families who are unable to rely on public information about potentially unsafe housing.

These agreements also undermine another key reform for public accountability: the establishment in the FY 2020 NDAA of a publicly available complaint database for privatized military housing units.¹⁶ This database is an essential tool for DoD to monitor the conditions of housing units and the nature of tenant complaints and concerns.¹⁷ But the use of NDAs limits DoD’s ability to monitor housing complaints and military families’ ability to review them by rendering tenants unable to discuss or file complaints related to the NDA. NDAs may also undermine DoD’s ability to accurately track work orders as required by law.¹⁸

NDAs also appear to be inconsistent with NDAA requirements that landlords offering a lease to military families must provide prospective tenants “all information regarding maintenance conducted with respect to that housing unit for the previous seven years” before the tenant moves into the housing unit.¹⁹ If any maintenance later falls under an NDA, prospective tenants may not have access to important information about the safety of their housing unit before moving in.

The use of these NDAs is an outrageous abuse of military families’ rights by private housing companies that have failed to do their job despite receiving millions of dollars in taxpayer funds.²⁰ Tenants should have the right to speak freely about their experiences and should not feel afraid to report any wrongdoing by their housing provider. Their right “to report inadequate housing standards or deficits in habitability of the housing unit” is part of the tenant bill of rights

¹³ U.S. Department of Justice, “Justice Department Announces Global Resolution of Criminal and Civil Investigations with Privatized Military Housing Contractor for Defrauding U.S. Military,” press release, December 22, 2021, <https://www.justice.gov/opa/pr/justice-department-announces-global-resolution-criminal-and-civil-investigations-privatized>.

¹⁴ Information on file with the Office of Senator Elizabeth Warren.

¹⁵ Department of Defense, “Military Housing Privatization Initiative Tenant Bill of Rights,” February 25, 2020, https://media.defense.gov/2020/Feb/25/2002254968/-1/-1/MILITARY_HOUSING_PRIVATIZATION_INITIATIVE_TENANT_BILL_OF_RIGHTS.PDF.

¹⁶ National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, Sec. 2894a.

¹⁷ *Id.*

¹⁸ *Id.*, Sec. 3017 and 3018.

¹⁹ *Id.*, Sec. 2892a.

²⁰ Task & Purpose, “Why a company guilty of ‘pervasive fraud’ remains one of the Pentagon’s biggest landlords,” David Roza, December 28, 2021, <https://taskandpurpose.com/military-life/balfour-beatty-military-housing-lawsuit/>.

and DoD must not allow the use of NDAs to undermine these rights.²¹ Private housing providers must not be allowed to silence military families, who make countless sacrifices for our country, to gain a profit or avoid accountability for forcing these families to live in unsafe or unsanitary housing.²²

Given these concerns, we ask that you put an immediate end to any and all NDA provisions that military housing providers have put in place. And to better understand the use of NDAs by privatized military housing companies and DoD's role in aiding or abetting their use, we request answers to the following questions no later than January 17, 2023:

1. What is DoD's policy in determining whether to approve or disapprove an NDA?
2. How many non-disclosure agreements have the Assistant Secretary of Defense for Sustainment or the Assistant Secretary of Defense for Energy, Installations and Environment (EI&E) received from privatized military housing companies on anything relating to their tenants since 2019?
 - a. Please provide a breakdown of the total number received per year by the Assistant Secretary of Defense for Sustainment and the Assistant Secretary of Defense for Energy, Installations, and the Environment to account for when this monitoring authority was transferred over to EI&E.
 - b. Please provide a breakdown of the total number approved and disapproved per year by the Assistant Secretary of Defense for Sustainment and the Assistant Secretary of Defense for Energy, Installations, and the Environment.
3. Which companies have used NDAs since 2019?
4. Has DoD received information on any NDAs that were not reported to EI&E?
5. When approving an NDA, in what ways does DoD engage with the tenants to ensure that DoD properly understands the case?
6. What avenues are available for the tenants to engage with DoD if they are concerned that the NDA is not appropriate for their case?
7. What steps is DoD taking to ensure that Balfour Beatty Communities is following housing regulations in the wake of continued evidence that it has engaged in improper behavior even after pleading guilty to fraudulent behavior?²³

²¹ Department of Defense, "Military Housing Privatization Initiative Tenant Bill of Rights," February 25, 2020, https://media.defense.gov/2020/Feb/25/2002254968/-1/-1/MILITARY_HOUSING_PRIVATIZATION_INITIATIVE_TENANT_BILL_OF_RIGHTS.PDF.

²² U.S. Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations, "Mistreatment of Military Families in Privatized Housing," April 26, 2022, <https://www.hsgac.senate.gov/imo/media/doc/2022-04-26%20PSI%20Staff%20Report%20-%20Mistreatment%20of%20Military%20Families%20in%20Privatized%20Housing.pdf>.

²³ *Id.*

8. When is the DoD contract with Balfour Beatty Communities up for renewal?
9. What steps is DoD taking in reevaluating the renewal of this contract after continued reports of BBC behavior that is harmful to military family tenants?
10. If a landlord or housing company has entered into an NDA with a tenant, how does DoD track this as part of the public complaint database required by the FY 2020 NDAA?²⁴
11. If a landlord or housing company has entered into an NDA with a tenant, how does DoD track this as part of the historical maintenance work order system required by the FY 2020 NDAA?²⁵
12. Do any DoD policies recommend or require the use of NDAs? Please provide those policies.
13. Has DoD ever suggested or required the use of an NDA for an agreement between a military housing provider and a tenant in any specific instances? If so, under what circumstances did this take place and how many times?

Sincerely,



Elizabeth Warren
United States Senator



Richard Blumenthal
United States Senator



Mazie K. Hirono
United States Senator



Sherrod Brown
United States Senator

²⁴ National Defense Authorization Act for Fiscal Year 2020, Public Law 116-92, Sec. 2894a.

²⁵ *Id.* Sec. 3017 and 3018.

Tim Kaine

Tim Kaine
United States Senator